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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN MUNDO,

Defendant and Appellant.

B187626

(Los Angeles County
Super. Ct. No. LA048810)

APPEAL from a judgment of the Superior Court of Los Angeles County, Darlene Schempp, Judge. Affirmed in part, reversed in part and remanded with directions.

John F. Schuck, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Linda C. Johnson and Gary A. Lieberman, Deputy Attorneys General, for Plaintiff and Respondent.

Juan Mundo was convicted of burglary (count 1), assault with intent to commit rape (count 5), and two counts of false imprisonment (counts 6 and 7), with a true finding on a dangerous weapon allegation. (Pen. Code, §§ 459, 220, 236, 12022, subd. (b)(1).)¹ He was sentenced to state prison for a term of seven years, eight months. Mundo appeals, contending his sentences on counts 1 and 5 (the burglary and assault) violate section 654 or, alternatively, that his sentences on counts 6 and 7 (the false imprisonments) should have been stayed. We agree that Mundo cannot be punished for all of the crimes charged, as does the Attorney General, and thus reverse and remand for resentencing without reaching Mundo's alternative sentencing issue.

DISCUSSION

A.

Mundo entered Jilma J.'s residence through a kitchen window. Jilma then entered the kitchen and, before Mundo said anything, told him to take whatever he wanted and asked him not to hurt her or her cousin, Magda G. (who was also in the apartment at the time Mundo entered). Mundo told the women to go into the bedroom and they complied. He told Jilma to enter a closet and told Magda to remove her clothes because he was "going to rape her." While Mundo moved toward Magda, Jilma ran out of her apartment. Mundo fled but was arrested later the same day, and a jury later convicted him of the charges noted at the outset.

The trial court sentenced Mundo to state prison for an aggregate term of 7 years, 8 months, as follows: 4 years (mid-term) for the burglary, plus 1 year for the weapon enhancement, plus 16 consecutive months for the assault (one-

¹ All section references are to the Penal Code.

third mid-term), plus 8 consecutive months for each of the 2 false imprisonment counts.

B.

Mundo contends, the Attorney General concedes, and we agree that Mundo cannot be sentenced for all four of these offenses.

No matter how we look at it, the evidence shows that Mundo entered the apartment to rape (or at least assault or falsely imprison) one of the women, not to steal or commit some other unrelated felony. Although the trial court said at the time of sentencing that Mundo might have entered the apartment with an intent to steal, there is no evidence to support that speculation -- the women heard Mundo enter, and Jilma told him to take what he wanted before he had a chance to ask for anything. He did not take anything when he left.

The question is whether the burglary, assault, and both false imprisonments were part of a single course of criminal conduct within the meaning of section 654 or, conversely, whether Mundo harbored multiple criminal objectives. (*People v. Britt* (2004) 32 Cal.4th 944, 951-952; *People v. Harrison* (1989) 48 Cal.3d 321, 335.) Of course, there is the multiple victim exception to section 654 (*People v. Miller* (1977) 18 Cal.3d 873, 885), which could apply here, depending on whether one or both women were victims of the burglary and the assault. (Cf. *People v. Centers* (1999) 73 Cal.App.4th 84, 98-99 [although burglary standing alone does not usually qualify for the multiple victim exception when the defendant commits both a burglary and the underlying felony, it may be treated as such when there is violence involved in the commission of the burglary]; see also *People v. Wims* (1995) 10 Cal.4th 293, 302.) Under this theory,

Mundo could be separately punished for the burglary as to Jilma (count 1), and for the assault with intent to rape Magda (count 5).

Alternatively, as the Attorney General suggests, the trial court could conclude (as the prosecutor argued) that Mundo entered with the intent to terrify and falsely imprison the women but not with the intent to rape, which was formed only after he entered. In that event, the sentences for the false imprisonments would have to be stayed. (*People v. Centers, supra*, 73 Cal.App.4th at p. 98.)

In sum, it appears there are several alternatives, and that the trial court is in the best position to reconsider the sentence from scratch.

DISPOSITION

The judgment is reversed insofar as the sentence is concerned and the cause is remanded to the trial court for resentencing. In all other respects, the judgment is affirmed.

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VOGEL, Acting P.J.

We concur:

ROTHSCHILD, J.

JACKSON, J.*

*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.